

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

SPENCER YOUNG,
Petitioner,

No. 1:09-cv-367

-v-

HONORABLE PAUL L. MALONEY

JEFFREY WOODS,
Respondent.

ORDER DENYING MOTION FOR RELIEF FROM JUDGMENT

On June 29, 2009, this court dismissed Petitioner Young's habeas corpus action because it was time barred. Petitioner filed a motion (Dkt. No. 11) for relief from judgment under Rule 60(b)(1) and (6) of the Federal Rules of Civil Procedure. Petitioner argues this court did not have jurisdiction over the petition because it was his third habeas application. Petitioner argues the court should have transferred the petition to the Sixth Circuit Court of Appeals for "precertification" of a successive petition under 28 U.S.C. § 2244.

The underlying factual basis for Petitioner's motion, that the habeas petition was successive, is incorrect. In his motion, Petitioner does not identify any previously filed habeas action. The record shows Petitioner filed a habeas petition in 1993 that was dismissed *without prejudice*. Accordingly, the legality of Petitioner's detention had not been determined based on the 1993 petition. *See* 28 U.S.C. § 2244(a). Petitioner, through counsel, filed this habeas petition in February 2009. The petition was amended in May 2009 so that it appeared on the court approved form. Contrary to Petitioner's assertion, these filings do not constitute previously filed petitions for the purpose of section 2244.

Petitioner fails to address several other conclusions included in the report and recommendation adopted by this court as its opinion. Petitioner does not dispute that the statute of limitation on his petition had not run when his 2009 petition was filed. Petitioner does not dispute that the petition fails to state a cognizable claim for federal habeas corpus review. Accordingly, the other reasons Petitioner advances in support of his motion do not entitle him to the relief requested.

For these reasons, Petitioner's motion (Dkt. No. 11) for relief from judgment is **DENIED**.
IT IS SO ORDERED.

Date: January 11, 2010

/s/ Paul L. Maloney

Paul L. Maloney
Chief United States District Judge